IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8701 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMRATLAL BADHARMAL SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8701 of 2004

MR PJ VYAS for Petitioner No. 1

MR NAGESH SOOD, AGP for Respondent No. 1-2

..... for Respondent No. 3-10

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 30/07/2004

ORAL JUDGEMENT

1. At the request of Mr.P.J.Vyas, learned advocate for the petitioner, respondent Nos.3 to 10 is permitted to be deleted. As, according to Mr.Vyas, no relief is sought against them, in fact, they are supporting to the petitioner.

2. RULE. Mr.Nagesh Sood, learned AGP, appears and waives service of rule on behalf of respondent Nos.1 & 2. With the consent of the parties, the matter is taken up for final hearing today.

3. By way of this petition, under Article 226 of the Constitution of the India, the petitioner has challenged the legality and validity of the order passed by the revisional authority i.e. Secretary (Appeals), Revenue Department dated 01/02-06-2004 in Revision Application No.39 of 1997, which is ex-parte and without hearing the petitioner.

4. Being aggrieved and dissatisfied with the order dated 07-06-1996 passed by the Collector, Surat in quashing and setting aside Entry No.981 dated 07-05-1968 and Entry No.1540 dated 15-07-1981, the petitioner and other persons had preferred a Revision Application No.39 of 1997 before the revisional authority i.e. Secretary (Appeals), Revenue Department, State of Gujarat. By order dated 01/02-06-2004 the said revision application was dismissed and confirmed the order passed by the Collector, Surat dated 07-06-1996 ex-parte by observing that though notices were served upon the petitioner and other persons, nobody is present on behalf of the revisionist.

5. Mr.P.J.Vyas, learned advocate for the petitioner, has submitted that in fact the hearing was fixed on 31-05-2004 but the petitioner and other persons came to be served with the notice with regard to fixing of date of hearing of the revision application on 31-05-2004 only on 02-06-2004 and, therefore, nobody could remain present on behalf of the petitioner and the revisional authority has decided the revision application ex-parte. The aforesaid facts has not been controverted by the respondent.

6. Mr.Nagesh Sood, learned AGP, states that the factum of service of notice on 02-06-2004 with regard to hearing fixed on 31-05-2004 is not disputed by the respondent.

7. Under the circumstances, the impugned judgment and order passed by the revisional authority i.e. Secretary (Appeals), Revenue Department is required to be quashed and set aside and the revision application is remanded to the Secretary (Appeals) Revenue Department for deciding and disposing of the same afresh in accordance with law and after giving an opportunity of hearing to all the concerned parties.

8. For the reasons stated above, the petition succeeds. The matter is remanded to the Secretary (Appeals) Revenue Department, State of Gujarat for deciding afresh in accordance with law and after giving an opportunity of hearing to all the concerned parties. The revisional authority is also directed to decide and dispose of the said revision application within a period of 03 (three) months from the date of receipt of this order.

9. It goes without saying that as now the matter is remanded to the revisional authority and the Revision Application No.39 of 1996 is revived, the interim relief granted earlier during the pendency of the revision application would automatically continue.

10. Rule made absolute to the aforesaid extent. No order as to costs.

Sd/-

[M.R.SHAH, J]

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'Bhavesh'